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BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 582 (Sub. No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

**COMMENTS OF THE RAIL LABOR DIVISION
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

Pursuant to the Board's decision served on March 31, 2000, the Rail Labor Division of the Transportation Trades Department AFL-CIO ("RLD") and its affiliated organizations[1] submit these comments in response to the Board's Advance Notice of Proposed Rulemaking ("ANPR" or "Notice of Proposed Rulemaking") regarding modifications of its regulations governing major rail consolidations. RLD agrees that the Board should reconsider and revise its regulations on major rail consolidations. It has been clear for some time that the current regulations favor applicant carriers and their parent corporations and undervalue the concerns of other parties such as rail employees, communities and shippers; in particular, Transactions effected under the current regulations have been devastating to railroad workers. It has also been clear in the last few years that recent consolidations which have been so damaging to railroad workers, have failed to produce the promised benefits; indeed the recent consolidations have worsened rather than enhanced rail transportation. Accordingly, RLD submits that the Board should revise its regulations concerning major rail consolidations. In these comments, RLD will address the

[1] American Train Dispatchers Department; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; Service Employees International Union; Sheet Metal Workers International Association; Transportation • Communications International Union; Transport Workers Union of America

specific subject areas cited by the Board in its notice; specific proposals for changes in the provisions of the regulations on major consolidation are highlighted herein in bold. Additionally, individual affiliates may provide their own comments on one or more of these subjects.

I. DOWNSTREAM EFFECTS

RLD strongly supports a change in the regulations concerning major consolidations such that the Board would analyze the likely "downstream effects" of a proposed Transaction. In past proceedings, Rail Unions have urged the Board and the ICC to consider the proposed Transactions in the context of likely reactive Transactions. Rail Labor believed, and still believes, that to truly assess the impact of a consolidation on employees, communities, shippers and the general public, the Board must consider the likely follow-on consolidations and their effects. Rail workers have suffered greatly from the recent spate of Transactions that seem to be as much about a contest to see which railroad can be the biggest, as they are about the purported transportation benefits. While the transportation benefits have been speculative, non-existent or even negative, one certainty has been that employees have been hurt.

RLD notes that parties seeking approval for consolidations have argued that the consolidations were necessary because of prior consolidations by competitors. In their filings, the proposed Transactions were presented as inevitable outcomes of prior Transactions. For example, the BN-ATSF Transaction was described as reactive to the UP-CNW Transaction. The UP-SP application began with a detailed history of the western consolidations beginning with the UP-MP Transaction; the UP-SP consolidation was described as the necessary next step in the progression. RLD also notes that an original goal of the 1920 and 1940 Acts, called for promotion of a more rational rail system with the ICC to approve Transactions that advanced that goal. *St. Joe Paper*

Co. v. Atlantic Coast Line R.R., 347 U.S. 298, 310, 315-321 (1953). RLD submits that assessing an individual consolidation in a broader context is certainly consistent with that mandate. Additionally, RLD notes that standard anti-trust analysis requires consideration of the broad market effects of a transaction, and is not limited to the entities engaged in the combination; the STB should similarly take a broader view of the Transactions submitted for its review. The ICC and STB have ignored the larger context of consolidations for too long; and by considering consolidations on a case-by-case basis, isolating their effects to the particular Transactions presented at particular times, the ICC and STB have not fully assessed the potential impacts of Transactions in a manner consistent with the intent of the Statute.

RLD therefore supports a change in the regulations whereby assessment of a consolidation would include consideration of "downstream effects.

II. ASSESSMENT OF PUBLIC BENEFITS AND MONITORING

In recent proceedings Rail Unions have questioned the validity of the applicants' forecasts of public transportation benefits. Too often the only "benefits" seem to have been private benefits to the carriers involved, in the form of reduced labor costs through layoffs and cramdown of changes in negotiated agreements. Morever, in the most recent Transactions, the public transportation effects have been negative, not positive; but still employees have suffered job losses and elimination of contract rights all in the name of unrealized public transportation benefits. For that reason, Rail Unions have advocated various forms of documentation, reporting and monitoring as to anticipated public transportation benefits. RLD supports an express requirement for monitoring and post-consummation assessment of Transactions.

However, RLD does not believe that post-consummation assessment of Transactions is enough. Too often, applicants offer the Board and interested parties the same speculative, general and pro forma assertions of public transportation benefits such as realization of "synergies" and "efficiencies" and reduced transit times. And too often, the Board has just accepted these assertions at face value, and has discounted evidence and testimony from other parties questioning the assertions of benefits. This has been especially troubling as the actual results of recent consolidations have been that transportation service has suffered, that efficiency has been reduced and that transit times have not decreased and have sometimes increased.

As the Board considers the standards to be applied to the next round of consolidations, the Board should ask itself a number of questions, such as :

Would the Board have approved the UP-SP Transaction had it known that UP grossly overestimated its ability to digest the SP with all of its problems, would layoff too many workers in order to achieve early cost reductions and therefore suffer a deficit in skilled workers, overestimated its ability to handle Texas traffic and would be unable effectively implement its unprecedented one-way traffic plan? These were the sorts of concerns that were raised by various parties in the UP-SP proceeding, but they were brushed off by the Applicants and given little weight by the Board.

Would the Board have approved the CSX/NS-Conrail Transaction if it knew that CSX and NS were wildly overconfident about the problems associated with dividing a major railroad like Conrail, that the plan to split Conrail's east-west routes was fundamentally flawed, given traffic flows and weather in the Northeast, that CSX and NSR would be understaffed and unable to adequately react to post implementation problems, and that in splitting the Conrail workforce

and in their zeal to negate the Conrail collective bargaining agreements CSX and NSR would not have adequate employees in the necessary locations at the right times working under rules that would make sense for the new operation? Again these types of concerns were raised but were arrogantly dismissed by CSX and NS and given insufficient weight by the Board.

RLD submits that the Board now has the opportunity to apply the lessons of the past. The Board should make it clear that it will not simply accept facile assertions of public transportation benefits from applicants. They must do more than merely mouth the same words that have been uttered by those who came before them. Applicants must be required to produce evidence to support their claims, not just the opinion of their own managers and "hired-gun" experts. Applicants must be required to provide some substantiation for the claims they make, based on prior experience, actual operational studies and pilot programs, customer surveys or some other objective analysis. Applicants should also be required to provide their own internal reviews of possible reasons why alleged benefits might not be realized along with their reasons for concluding that the positive scenario is more likely than the negative or status quo scenario. This requirement is especially important when claims are made based on assertions that have been offered before, but have not come to fruition. The Board should critically test the claims, supporting evidence, and analyses of the applicants by, at a minimum, imposing an express burden of proof on the Applicants to show by "clear and convincing evidence" that the projected benefits are likely to be realized.

RLD realizes that all forecasts contain a certain amount of speculation, but that does not mean that broad generalizations and bald assertions should be accepted, especially when they conflict with actual experience. By imposing a clear burden of proof that must be satisfied if an

application is to be approved, the Board will be taking a small step toward providing for a more meaningful review of major consolidation applications and it will hopefully reduce the likelihood of the sorts of service debacles that have plagued the industry as a result of recent Transactions.

The RLD therefore urges that the regulations at 49 C.F.R. 1180 be amended to add the following language at new Section 1180.1(c)(3):

> **In order for a transaction to be approved, the applicants must show, by clear and convincing evidence, that the projected public interest benefits are likely to be realized and likely to outweigh any potential harm to the public interest.**

III. SAFE OPERATIONS

In its APNR, the Board recognized that "the rail transportation policy of 49 U.S.C. 10101...guides us in our regulatory activities [and] directs us, among other things, to promote safety..." APNR at 14, n. 11. The Board went on to specifically discuss the importance of maintaining safe rail operations and announced "Ensuring that safety concerns are addressed has been, and will remain, a primary goal of our environmental review in railroad merger cases." While the APNR states that the Board "do[es] not see any reason to alter our merger rules in this respect", we respectfully submit that the Rules should, at a minimum, contain some reference to the importance of safety issues in the merger application consideration process. This can be accomplished without getting into the detailed descriptions currently under consideration in the ongoing Joint Rulemaking on Safety Integration Plans (STB Ex Parte No. 574/FRA Docket No. SIP-1, Notice No. 1).

Section 1180.1(c) of the current merger procedures describes the public interest considerations involved in the Board's consideration of merger applications. It explains that "the Board performs a balancing test...weigh[ing] the potential benefits to applicants and the public

against the potential harm to the public." The rule declares that "[t]he Board will consider whether the benefits claimed by the applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public." Subsection (2) addresses the potential harm that could result from a consolidation. Unfortunately however, that Subsection presently describes only "*two* potential results from consolidations which would ill serve the public – reduction of competition and harm to essential services." Emphasis added. The Board should broaden that provision to include at least one other potential harm to the public – "unsafe operation of rail service." This is not within the scope of the current rule, as the rule does not now mention safety in describing what is meant by "harm to essential services." See Section 1180.1(c)(2)(ii). The additional language we propose will confirm the Board's understanding that a deterioration in safety (which was an unfortunate result in the UP/SP and Conrail transactions) is a potential consequence of rail mergers that will not be ignored when the Board considers future merger applications.

Thus, RLD proposes that Section 1180.1(c)(2) be amended to read:

> ***Potential harm.*** **There are three potential results from consolidations which would ill serve the public – reduction of competition, harm to essential services, and unsafe operation of rail service.**

Further, the RLD notes that the safety problems that have arisen after recent major consolidations have involved not only the integration of formerly separate properties (a subject addressed in the Board's Safety Integration Plan requirements), but also the ability and willingness of the post-transaction entities to perform necessary maintenance work on track, signal systems, locomotives and rail cars.

Post-transaction, these carriers have been pressured by the financial markets to produce immediate savings and to react to dramatic plunges in their stock prices by cutting costs. They have responded to this pressure by laying off employees responsible for track, signal and equipment maintenance and repair. Not unexpectedly, the tracks and equipment have deteriorated as a result.

The RLD proposes that the Board should recognize the possibility of this happening in the future by requiring that applicants include a "safety inventory" in their initial filings. This inventory would describe the pre-transaction condition of the equipment, signal system(s) and trackage of the carriers involved. This is not a great burden. If the applicants have not done such an evaluation during their "due diligence" assessments, they should have. The inventory would also explain the manner in which the applicants would insure continued safe operations, and assure the Board that a resulting consolidated carrier will have the financial ability to continue to maintain safe operations. The RLD therefore propose that the following subsection (iii) be added to Section 1180.1(c)(2):

> ***Unsafe operation of rail service.*** **Consolidations have the potential for reducing the level of safety in the rush to eliminate redundant operations, combine facilities, reduce expenses, and increase profitability. Operating efficiencies are not real if they come at the cost of unacceptable safety risks to rail employees and the public. In assessing the impact of proposed consolidations, the Board will focus on ensuring that safety concerns are not overlooked and that safety is not compromised in the consolidation process. In that regard, the Board will scrutinize the condition of applicants' tracks, structures, dispatching and signal systems, locomotives and rolling stock, and the applicants' plans to maintain and/or upgrade those physical assets, and, in conjunction with the Board's assessment of the applicants' financial filings, determine whether the proposed merged carrier will possess the financial wherewithal to undertake whatever expenditures are necessary to maintain safe operations.**

IV. CRAMDOWN

The use of the "cramdown" provisions of the Interstate Commerce Act to compel changes in collective bargaining agreements ("CBAs") outside the procedures of the Railway Labor Act, or agreements negotiated under that Act, remains a potent source of instability in railroad labor relations.[2] The Board heard testimony from Rail Labor representatives over the course of the morning of March 8, 2000 recounting the harm inflicted upon employees through the rail carriers' use of cramdown in merger and consolidation cases. A change must be made to the Board's policy permitting the use of cramdown to permit compelled changes to CBAs in the guise of obtaining what are unquantifiable and illusory "public transportation benefits" flowing from mergers and consolidations. The RLD submits that the Board conceded in its recent moratorium decision that current merger rules and policies, including those related to the use of cramdown, "are simply not appropriate for addressing the broad concerns associated with reviewing business deals geared to produce two transcontinental railroads." Ex Parte No. 582, Public Views on Major Rail Consolidations, slip op. at 2, served March 17, 2000 ("Moratorium Decision"). The development of new procedures in this rulemaking provides the vehicle for the Board to eliminate a major source of friction in railroad labor relations.

The RLD's public opposition to cramdown is longstanding. In 1998 and again in 1999, the TTD passed resolutions condemning the use of cramdown and calling for the Board and Congress to end that practice. *See* attachment A. The RLD submits the Board's new merger procedures should expressly renounce the necessity for the use of cramdown in fashioning

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[2]"Cramdown" means the ability of arbitrators acting under authority delegated by the Board, or the Board itself, to override, modify or abrogate agreements made under the Railway Labor Act. That authority ultimately derives from 49 U.S.C. §11321(a).

implementing agreements providing for the selection of forces and assignment of employees arising from railroad mergers. Instead, the Board should adopt a policy once followed by its predecessor, *i.e.*, make the parties use existing agreements and/or resort to traditional collective bargaining to rearrange the forces and then apply the substantive protections of the Board's employee protective conditions for the benefit of employees adversely affected by the rearrangement. That policy would encourage labor peace, restore the railroad employees' confidence in the Board as an "honest broker" in merger cases and comport with the "new paradigm" identified by Commissioner Clyburn in his concurring opinion to the *Moratorium Decision*.

Prior to the passage of the Staggers Act, the former ICC rejected attempts by the carriers to involve it in railroad labor relations. The ICC's policy then was both prudent and comported with the statutory scheme Congress intended to apply to railroad labor relations. That scheme was crafted after the failure of Title III of the Transportation Act of 1920, Congress's first attempt at all-inclusive railroad labor legislation. That Act created the Railroad Labor Board which had authority to pass judgment on the substance of collective bargaining agreements and the parties' conduct during collective bargaining. While the Labor Board's decisions were not judicially enforceable, the Board's clear bias in favor of the carriers precipitated and prolonged the Shopmen's Strike of 1922, the largest rail labor dispute in United States history. The Congressional response was swift and decisive: the Railway Labor Act of 1926, followed by significant amendments in 1934. The premise of the RLA is the *voluntary* adjustment of disputes through negotiation and mediation. Arbitration of interest disputes cannot be compelled under that Act. Moreover, the agency created under that Act, the National Mediation Board, lacks

jurisdiction to review the substance of CBAs and does not have any adjudicatory authority over the parties' conduct of collective bargaining. The RLA is the antithesis of the labor relations scheme established under Title III.

Congress did not grant the ICC any express role in railroad labor relations under either the 1920 Transportation Act or the RLA. The ICC's first foray into the labor field came in the late 1930's when it imposed a variant of the Washington Job Protection Agreement of 1936 ("WJPA") as a condition of its approval of an intracorporate lease because not all carriers and unions were signatories to the WJPA.[3] *U.S. v. Lowden*, 308 U.S. 225 (1939). Notably the WJPA was a collectively bargained agreement the ICC imposed upon the lease to ensure equivalent treatment of all employees affected by the transaction. Subsequently, Congress included a provision in the Transportation Act of 1940 that *required* the ICC to impose economic protections for the benefit of employees harmed by a merger within the first four years after the ICC's approval of a merger or consolidation. Later, the Supreme Court held the ICC had the discretion to extend the "protective period" of the employee conditions. *Ry. Labor Executives' Ass'n v. U.S.*, 339 U.S. 142 (1950).

The ICC's view of its lack of involvement in and jurisdiction of the substance of railroad labor relations during this period was summarized in *Southern Railway Co.–Control–Central of Georgia Ry.*, 331 I.C.C. 151 (1967). There the ICC noted that its policy since 1934 had been "a concern for the preservation of seniority rights and the fulfillment of existing contractual obligations on the part of a carrier." *Id.* at 158. The Commission's authority to impose employee protective conditions under Section 5(2)(f) of the ICA was not for the purpose of promoting so-

[3]Today, all unions and Class I carriers are signatories.

called efficiencies for the merged carriers, instead, the conditions worked to provide protection against "long and sudden unemployment" arising from mergers and consolidations. *Id.*

The Commission also knew that mergers and consolidations generally caused rearrangements and disruptions to existing rail employee assignments. Those rearrangements, however, were to be handled under a *private agreement*, the WJPA. Indeed, the ICC rejected the carriers' argument that the cramdown provisions of the ICA "automatically relieves" a carrier "from the operation of all restraints, limitations, and prohibitions insofar as may be necessary to enable them to carry into effect the transaction approved by us." *Id.* at 168. Instead, the ICC found that it was not *necessary* to override either to the WJPA or existing CBAs because they were not restraints against the transaction. *Id.* at 170, *see also, Chicago, St. Paul, Minneapolis & Omaha Ry.– Lease*, 295 I.C.C. 696, 702 (1958). The substantive protections imposed under Section 5(2)(f) were applied after the "carriers have arrived at their adjustments of the labor force *in accordance* with the governing provisions of their collective bargaining agreements so that the carriers may be enabled to carry an approved transaction into effect." *Id.*. Under this regulatory scheme, the ICC oversaw 26 major mergers or consolidations during the period 1940-1976.[4]

Twice, the ICC/STB acknowledged that the system described in *Southern Control* worked. *CSX Corp.–Control–Chessie System, Inc.*, 6 I.C.C.2d 715, 740-45 (1990) ("*Carmen II*") and Finance Docket No. 28905 (Sub-No. 22) *CSX Corp.–Control–Chessie System, Inc.* (Arbitration Review), at 10-11 (served September 25, 1998)("*Carmen III*"). Nevertheless, since 1982, the ICC and this Board have asserted that it is necessary to utilize the

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[4]A table of the mergers effected under the combination of WJPA and ICC-imposed conditions is Attachment B.

override authority of the ICA to carry out the selection of forces and assignment of employees caused by an approved merger or consolidation.

This change in policy coincided with the ICC's adoption of new merger procedures following passage of the Staggers Rail Act of 1980. According to the Congressional findings in the Staggers Act, the nations railroads were short of capital and in danger of further deterioration. Pub. L. 96-448, §2(7) & (8). To combat these problems, Congress found that "modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads to save energy and combat inflation." *Id.* at (9). The ICC's merger procedures adopted in 1982 favored private initiatives that would lead to the rationalization of rail facilities. 49 C.F.R. §1180.1(a). The ICC also found that one of the potential benefits of rail mergers and consolidations is the reduction of redundant facilities. 49 C.F.R. §1180.1(c)(1). In short, the 1982 merger procedures were designed to "encourage railroads to formulate proposals that would help rationalize excess capacity in the industry." *Moratorium Decision* at 6. Shortly after the merger procedures were issued, the ICC adopted a new policy regarding the applicability and utility of overriding CBAs in merger and consolidation cases, what we refer to as "cramdown."

In a 1983 trackage rights case, the ICC held for the first time that the "cram down" provision of the ICA overrode CBAs that "impeded" a carrier's carrying out of an approved transaction. Finance Docket No. 30000 (Sub-No. 18), *Denver & Rio Grande Western Ry.–Trackage Rights–Missouri Pacific R.R.*, served October 19, 1983 (not printed). Subsequently, in two *New York Dock* arbitrations, the arbitrators relying upon the *DRGW* decision held that CBAs could be overridden in the course of creating an implementing agreement

providing for the selection of forces and assignment of employees affected by a merger. These two arbitral awards spawned the *Carmen* line of cases which persisted in litigation until September 1998.

The arbitral awards were reviewed by the ICC, which expanded upon the arbitrators' use of the override authority. The Unions appealed and prevailed before the D.C. Circuit. One of the losing railroads successfully took the case to the Supreme Court and prevailed. The Court's 1991 decision in *Norfolk & Western Ry. v. American Train Dispatchers Ass'n*, 499 U.S. 117, 132 (1991) found that the "cram down" could apply to CBAs. However, the Court expressly stated that it offered no opinion on what constituted the "necessity" predicate for the "cram down" provision's use. *Id.* at 134. The battle since has been over the definition of "necessity."

While *Dispatchers* was pending before the Supreme Court, the ICC issued its decision in Carmen II. There, the ICC conceded that its claim that the cramdown provisions of the ICA permitted substantive changes to CBAs was "fairly recent." 6 I.C.C.2d at 755. The ICC pulled back somewhat on its earlier aggressive view of the use of cramdown by holding that "any changes in CBAs will be limited to those necessary to permit the approved consolidation." *Id.* at 752. This "necessity" predicate was fleshed out by the Court of Appeals for the District of Columbia Circuit in two cases, *Ry. Labor Executives Ass'n v. U.S.*, 987 F.2d 806 (D.C. Cir. 1993) and *American Train Dispatchers Ass'n v. I.C.C.*, 26 F.3d 1157 (D.C. Cir. 1994). In *ATDA*, the court squarely confronted the applicability of the cramdown provisions to CBAs in merger and consolidation proceedings. There, the court adopted the earlier iteration from *Executives* that it was "necessary" to override a CBA if the underlying transaction "yields a transportation benefit to the public . . . . the transaction must yield enhanced efficiency, greater

safety, or some other gain." 26 F.3d at 1164. That "necessity" standard has been applied by the ICC/STB since that time.

The railroads have used cramdown aggressively to make wholesale changes in CBAs. The specific instances were related in the various comments and the testimony offered by the unions in *Ex Parte No. 582* and will not be recounted here. The reaction of labor to this policy has been uniform, condemnation of the carriers for engaging in cramdown and skepticism towards the fairness of the ICC/STB in the administration of what are supposed to be conditions for the protection of railroad employees. Congress also has an ongoing interest in cramdown. Presently there are three proposed bills: S. 1590 sponsored by Sen. Crapo (R-Idaho); H.R. 3446 sponsored by Rep. Oberstar (D-Minnesota) and H.R. 3398 sponsored by Rep. Nadler (D-New York), that *remove* all cramdown authority from the Board in rail labor relations matters. Nevertheless, the Board has retained the use of cramdown as a blunt tool to help merging carriers provide the public with putative transportation benefits allegedly flowing from mergers and consolidations.

The *Moratorium Decision* effected a sea change in the Board's merger policies. After noting the railroad industry has "consolidated aggressively in recent years," the Board admitted that the 1982 merger procedures "are simply not appropriate" for the regulation of the industry as currently configured. Slip op. at 1-2. Indeed, the Board found "[t]he goals of that merger policy have largely been achieved." *Id.* at 7. Significantly, the Board made a finding that undermines the reason for cram down (*id.*):

> It does not appear that there are significant public interest benefits to be realized from further downsizing or rationalization of rail route systems, as there is little of that activity left to do. Looking forward, the key problem faced by railroads – how to improve profitability through enhancing the service provided to their

> customers – is linked to adding to insufficient infrastructure, not to eliminating excess capacity.

In other words, the Board found that the "public transportation benefits" or "efficiencies" that allegedly required the use of cramdown have been obtained and there is no *need* for the use of cramdown of CBA provisions.

Significantly, the UP, KCS and CSX all agree that the 1982 merger procedures deal with a different industry and support policy choices that are outdated. As CSX concedes, "[o]n their face, the Board's existing regulations for rail combinations appear to be out of date." *STB Ex Parte No. 582*, Reply of CSX Corp. and CSX Trans., Inc. to Petition for Stay by Canadian National Railway Co. at 5, dated March 27, 2000. Similarly, the UP admits "[t]he Board properly concluded that, in light of the major changes that had occurred in the rail industry, its rules governing review of mergers were outdated." *STB Ex Parte No. 582*, Reply of Union Pacific to Petitions for Stay at 3, dated March 27, 2000. KCS summarized best the need for new merger procedures thus:

> Given the sweeping changes which have embraced, and have been embraced by, the rail industry in recent decades, it is entirely appropriate to observe that many of the challenges facing the rail industry today were clearly not contemplated when the current regulations were fashioned. When the existing regulations were adopted to implement the Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895 (1980), the rail industry faced far different challenges. As the Board and many other parties have correctly observed, major concerns for the rail industry then focused on Class I bankruptcies, wholesale abandonments of main line track, and government ownership of failing rail franchises. In order to address these concerns, the Interstate Commerce Commission ... was given merger regulations designed to pare track of excess capacity and facilities, release rail carriers from outmoded pricing restrictions, and return railroads to economic vigor.

The Board's findings in the *Moratorium Decision* support a change in its policy regarding the application of cramdown to CBAs in railroad mergers and consolidations. The ICC changed

the cramdown policy in 1982 specifically to expedite rail mergers and the consolidation of redundant facilities. In the *Moratorium Decision*, the Board conceded that whatever the merits of that policy, it no longer was applicable to railroad industry today. The entire thrust of the *Moratorium Decision* is one of caution and prudence regarding future mergers and consolidations. Indeed the Board defended its moratorium decision as necessary to "provide a degree of stability for what is now a very fragile industry and permit vital public interest issues to be addressed on an evenhanded basis for all merger proposals." Slip op. at 10. The RLD submits that one of the "vital public interest issues" the Board should address is the elimination of cramdown in the labor relations field as obsolete and inconsistent with the public interest confronted by the possibility of a rail duopoly in North America.

Specifically, the Board should change its policy and return to the position expressed in *Southern Control*. That position respected the private agreements the railroads and the unions representing their employees reached regarding rates of pay, rules and working conditions. As the ICC noted in *Southern Control*, the parties had a private agreement that resolved selection and assignment issues arising from mergers and consolidations, the negotiation and arbitration provisions of Sections 4 and 5 of the WJPA. Notably, the ICC in *Southern Control* concluded that neither the WJPA nor CBAs precluded carriers from carrying out mergers and consolidations. In *Carmen III*, this Board referred to this earlier period as a "40-year era of labor peace." Slip op. at 11. The Board should find here that its new merger procedures do not require the application of the cramdown provisions of the Interstate Commerce Act to CBAs. Instead, the Board should fashion protective conditions that leave to the parties the task of privately arranging for the selection of forces and assignment of employees resulting from mergers and

consolidations. The default mechanism should be Sections 4 and 5 of the WJPA or such other agreement provisions that are applicable to mergers and consolidations. However, such a minimum standard does not prevent labor and a rail carrier from reaching another, mutually satisfactory arrangement to resolve selection and assignment issues arising in a merger or consolidation. The primary point is that the Board should remove itself from the labor relations business and focus solely on the administration of the substantive benefits provided in the employee protective conditions it is required to impose on its approval of a merger or consolidation. Such a diminution in the Board's involvement in labor relations would go far towards reestablishing a period of labor peace regarding mergers and consolidations and comport with the "new paradigm" for mergers and consolidations found by Commissioner Clyburn in the *Moratorium Decision*.

To adequately reflect the change in policy we seek here, the RLD proposes the following be included immediately before the final sentence in 49 C.F.R. 1180.1(f):

> **The Board finds that it is not necessary to override, modify or abrogate collective bargaining agreements to carry out an approved transaction; instead the Board expects rail carriers to effect merger-related force rearrangements under existing agreements or under agreements negotiated by the carrier and the representatives of its employees for the specific transaction. No arbitrator acting under authority granted by the Board shall have the right to override, modify or abrogate a collective bargaining agreement unless otherwise permitted by an existing collective bargaining agreement.**

V. OTHER EMPLOYEE ISSUES

A. Transfers/Relocations

The Board's March 31 order seeks comments on whether the Board should expand the labor protection beyond the levels currently imposed pursuant to *New York Dock Railway* —

Control — Brooklyn Eastern District Terminal, 360 ICC 60 (1979)("*New York Dock*"). Under the current interpretation of *New York Dock*, employees who decline an opportunity to follow their work are not eligible to receive either a dismissal allowance or severance benefits, and must instead opt for furloughed status without *New York Dock* protection. A review of the consequent hardship upon employees affected by prior mergers demonstrates that *New York Dock* no longer constitutes a "fair arrangement" for employee protection, pursuant to the Board's obligation under 49 U.S.C. §11326(a), and that substantial expansion of these protective terms is required. Specifically, the devastating impact of such transactions upon rail employees warrant the imposing of new protective conditions that removes the obligation of an employee whose work has been transferred to follow that work, and instead gives the employee the option of (1) receiving a separation allowance based upon the WJPA formula, or (2) receiving a dismissal allowance until the employee has sufficient service credits and is of sufficient age to take an unreduced Railroad Retirement annuity, or for a period not exceeding the employee's seniority on the railroad prior to his becoming a "dismissed employee."

Rail labor has requested enhanced employee protections in prior transactions, most recently those involving the 1998 purchase of Conrail by CSX and the Norfolk Southern and the 1996 merger of the Union Pacific and Southern Pacific. In both instances, the Board imposed *New York Dock*, declining any enhancements. These transactions – as well as prior Class I mergers[5] – imposed substantial hardships on affected employees, hardships that *New York Dock*

[5] Examples of these predecessor transactions include the 1982 consolidation of the Union Pacific, Missouri Pacific, and Western Pacific Railways (UP-MP-WP), the 1995 merger of the UP and the Chicago & North Western Railroad (UP-C&NW), and the 1995 merger of the Burlington Northern with the Atchison, Topeka and Santa Fe Railroad (BNSF).

was clearly inadequate to address. This was particularly true in those instances where the affected employee's family was either unable or unwilling to relocate with the work, requiring the employee to choose between his or her family or preserving what often amounts to decades of seniority on the railroad. These hardships have resulted in senior employees simply quitting, divorces, broken families and, in some cases, even worse consequences. What follows are a few examples of how the requirement to follow one's work led to major – and in some cases, tragic – disruptions in the lives of employees affected by the various mergers involving the UP merger and by the CSX/NS/Conrail transactions:

- Ron Kasper, a Conrail employee with 23 years of service, was unable to exercise his seniority to a position in Pittsburgh, where he and his wife supported two daughters in high school and Kasper's 81 year old mother, and opted to take a position in Atlanta rather than forego his New York Dock protection; as his scheduled transfer date approached, his wife and daughters refused to move from Pittsburgh and his mother became physically ill at the prospect of the family leaving the area; on the eve of the scheduled transfer date, Kasper gave up his 23 years of seniority and resigned from railroad service;

- Dave Stephens was transferred from Pittsburgh to Mount Laurel, but his family refused to relocate; rather than lose his wife and family, Stephens resigned;

- Clayton Wilson, a thirty-year employee, had been transferred in 1992 by Conrail from eastern Illinois to Pittsburgh, where he was forced to leave his family behind – he commuted on weekends between Pittsburgh and Illinois for six years before the Conrail merger; as a result of the Conrail merger, Wilson elected to take a position in Atlanta because it was the one position available to him that was closest to his family in Illinois, and relocated in November of 1999; five months later, Wilson suffered a near fatal heart attack in Atlanta – 700 miles from his family;

- Pat Brannan, who was married to a clerk in Pittsburgh with more seniority, took a job at Waynesburg, PA to remain close to his wife; after he was bumped from that position, the only available position in his seniority district was in Toledo, Ohio, which he took; the clerical forces in Toledo

were subsequently relocated to Atlanta, giving Brannan – who held 25 years of seniority – the option of moving 680 miles from his wife or forfeiting his 25 years; Brannan now works in Atlanta while his wife works in Pittsburgh;

- Jim Gibbons, a 33-year veteran, was forced to take a Shared Assets Area position in Mount Laurel while his wife – a school teacher who must still work another three years in order to collect her pension – remains 300 miles away in Pittsburgh; Gibbons commutes on weekends.

- W.E. Bardsley, a UP employee with seniority dating back to 1965 on the Missouri Pacific, was required in 1988 to relocate from Topeka, Kansas to Omaha, after MP clerical positions in Topeka were abolished in November 1997; Bardsley had to leave his family behind in Topeka, and has had to live apart from them for the past 12 years, at a substantial monetary (i.e., extra living and travel expenses) and personal cost;

- in 1988, as a result of the UP-MP-WP merger, MP employee B.J. Mace was required to move with her children to Omaha, while her husband (a trainman) was required to remain in Texas; they have lived apart ever since;

- David Stubblefield, an SP employee who was transferred from Denver to Omaha in March 1997 as a result of the UP-SP merger, was forced to leave his family behind in Colorado and has been required to bear the cost of two residences since that time; further, he has only been able to return to Denver once or (on rare occasion) twice a month to see his family; and

- as a result of the UP/SP merger, Paula Morrison, a clerk with seniority dating back to October of 1961, was required in July of 1997 to move from her home in Houston to Omaha, leaving her husband and family behind – since then several family emergencies (including a stroke suffered by her mother and multiple heart attacks suffered by her husband) have inflicted substantial hardship upon her, including bearing the costs to move her mother to the Omaha area prior to her death, and having to take fourteen to sixteen weeks of emergency leave (as well as travel expense) to care for her mother and husband.

(*See* attached declarations of R. Kasper, D. Stephens, P. Brannan, and J. Gibbons, and statements of W.E. Bardsley, B.J. Mace, D. Stubblefield, and P. Morrison, Attached hereto as Attachment C (some statements initially filed without signatures but approved by declarants, signed copies will

be submitted)). With respect to the Conrail transaction in particular, these stories must be understood in their proper context: with the exception of a few employees, Conrail employees in Pittsburgh had been transferred there only in 1991 and 1992 from other areas around the system. At that time, these employees were told it would be their "last move." Less than six years later, these employees were once again forced to uproot, leave loved ones, and once again make sacrifices in order to continue their rail careers.

These are only a few examples of the significant hardships that have been experienced by rail employees as a result of the major rail consolidations of the past twenty or so years. In many cases, these employees hold upwards of twenty or twenty-five years of seniority on the railroad, and are fifty years of age or older, making it far more difficult for the employee to simply resign and forego that seniority – not to mention the benefits (Railroad Retirement credits, health and welfare benefits, etc.) attendant to it. These were the types of familial disruptions the rail unions were seeking to prevent in prior Board proceedings by requesting enhanced employee protection. The consequences of the Board's rejection of the unions' requests is all too apparent, and are particularly galling in light of the Conrail merger, where Conrail managers (many of them far less senior than the employees listed above) were granted handsome "golden parachutes."

These pressures on rail employees will only be magnified in future consolidations between rail carriers. Given the limited number of Class I railroads left in the United States, it is clear that any future consolidations will, of necessity, result in transcontinental systems, stretching the ties that bind these employees to their families all the more. The ICC's formulation of the *New York Dock* Conditions and its predecessors never contemplated employee impacts on this scale.

Accordingly, the *New York Dock* Conditions are no longer a "fair arrangement" for the protection of employees.

The Board has ample justification to impose enhanced employee protection. As seen above, employees are currently required, at the risk of losing their protection, to relocate wherever the carriers involved decide they want to transfer work. This requirement imposes a great personal cost upon involved employees. Older employees with substantial seniority are faced with the veritable Hobson's Choice of electing to uproot and disrupt their families or risk losing all of what they've worked for in their years of service to the railroad – Railroad Retirement benefits, health insurance, steady income, etc. Indeed, simply giving employees the option of taking a separation allowance instead of following work will fall short of doing these employees justice, in that older employees are far less likely to be able to find new jobs offering pay comparable to that of the railroad. Further, the mere option of a separation allowance does not answer important concerns about preserving the employee's entitlement to Railroad Retirement benefits, health insurance, etc. Senior employees who do not want to risk destroying their families by following work would risk losing their investment in Railroad Retirement and other benefits if the only alternative available is a separation allowance.

For these reasons, we believe that the Board should impose employee protective conditions which provide an employee whose work is transferred the option of (1) receiving the equivalent of a *New York Dock* dismissal allowance until such time as that employee would be eligible to receive an unreduced Railroad Retirement annuity (or for a period not exceeding the employee's seniority preceding his becoming an affected employee), or (2) receiving a separation allowance, according to the WJPA formula. To preserve his entitlement to protection, such an

employee would be required to take any vacant position for which he was qualified and to which his seniority would entitle him within thirty (30) miles of his former work location.[6] The text of the recommended changes to the *New York Dock* Conditions is set forth below. Such employee protective conditions are not unprecedented: they are roughly the same as those of the "Orange Book," which was imposed by the ICC in connection with the 1967 merger which created the Burlington Northern. *See Great Northern Pacific–Merger–Great Northern*, 331 I.C.C. 228, 276-79 (1967).

More important, these proposed employee protective conditions truly constitute a "fair arrangement" for the nation's rail employees. Over the past twenty years, these employees have been forced to undergo the kind of disruption of their family and personal lives described above, all in the name of ensuring that the carriers were able to efficiently and profitably implement such consolidations. With the likelihood that future rail consolidations will be even more geographically expansive in scope, the human costs will become even more profound. Simple fairness demands employee protective terms that will address and remedy these costs. The protective terms proposed here by rail labor will meet these demands, and the Board should impose them accordingly.

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[6] Employees who could hold a position at their home location would not be eligible for these benefits. The issue of whether employees may be eligible to receive a displacement allowance if they elect to exercise seniority to a lower rated position at their home location rather than follow their work is currently being considered by this Board in an unrelated proceeding in which TTD and Rail Labor have submitted comments. *Norfolk Southern– Merger– Norfolk & Western Ry. (Arbitration Review)*, STB Fin. Docket No. 29430 (Sub-No. 21). In that proceeding, we maintain (as argued by TCU, the involved union) that *New York Dock* already provides displacement allowances in those circumstances.

Assuming the Board accepts this proposed modification of *New York Dock*, we request that the Board also make clear that employees exercising seniority at their home location be entitled to a displacement allowance.

B. Test Period Averages

The RLD submits that the Board should clarify that employees should be furnished with Test Period Average Data upon their request. Protection for employees adversely affected by rail mergers typically is based on the conditions imposed in *New York Dock*. Article I, Section 1(b) of *New York Dock* defines a "displaced employee" as:

> "an employee of the railroad who, as a result of a transaction[,] is placed in a worse position with respect to his compensation and rules governing his working conditions."

A displaced employee, upon demonstrating that he/she has been placed in a worse position as the result of a transaction, is entitled to "a monthly displacement allowance ["MDA"] equal to the difference between the monthly compensation received by him[/her] in the position in which he[/she] is retained and the average monthly compensation received by him[/her] in the position from which he[/she] was displaced." *New York Dock*, Art. I, §5(a). Moreover,

> "[e]ach displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he[/she] was paid during the last 12 months in which he[/she] performed services immediately preceding the date of his[/her] displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases."

Id.

The baseline from which actual earnings are deducted in calculating the MDA is referred to as the "test period average" ("TPA"). Neither the calculation of the TPA, nor the furnishing of a TPA to an employee, constitutes a determination that a transaction-related adverse effect has occurred, and is not "pre-certification" of an adverse effect. Rather, furnishing the TPA provides the means for the employee to quantify the severity of the adverse effect for a given month. The

TPA also enables the employee to fulfill the following obligation to work the highest-rated position available to the employee in the normal exercise of his/her seniority:

> "If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline."

New York Dock, Art. I, §5(b).

A requirement that railroads involved in mergers automatically provide their employees with TPA data is not without historical foundation. When Congress enacted the Regional Rail Reorganization Act of 1973, the employee protection provisions included precisely such a requirement:

> "An employee and his representative shall be furnished with a protected employee's average monthly compensation and average monthly time paid for, computed in accordance with the terms of this subsection, together with the data upon which such computations are based, within 30 days after the protected employee notified the Corporation in writing that he has been deprived of employment or adversely affected with respect to his compensation."

P.L. 93-236, Title V, §505(b)(5), Jan. 2, 1974, 87 Stat. 986.

Further, all of the "Big 5" Class I railroads[7] voluntarily agreed to automatically furnish employees with TPAs in the most recent round of industry mergers. As just one example, the Brotherhood of Locomotive Engineers (BLE) entered into commitment letters to provide all engineers with TPAs as a condition precedent for BLE support of the following mergers: Burlington Northern with Santa Fe; UP with Southern Pacific, a copy of which was entered into

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[7]Burlington Northern Santa Fe (BNSF), Consolidated Rail Corporation (Conrail), CSX Transportation (CSX), Norfolk Southern (NS), and Union Pacific (UP).

the ICC's record as part of BLE's submission concerning the UP/SP merger proposal; the division of Conrail between CSX and NS; and the proposed merger of BNSF with Canadian National. In those cases, certain groups of employees were deemed to be adversely affected as a result of pending transactions arising during the implementation of the merger. Thus, the major railroads' actions acknowledge that there is at least an implicit duty to provide TPA data. Significantly, these agreements show that the level of computer technology utilized by the carriers' payroll departments means that it cannot be argued that a requirement to furnish TPA data is burdensome.

A requirement for railroads to automatically provide employees with their TPA data also would provide for greater efficiency and economy, because it would reduce or eliminate a number of disputes arising from the application of *New York Dock*. These disputes generally fall into three categories.

The first category — establishing a causal connection between a merger-related transaction and the adverse effect — would not be disturbed by such a requirement. The other two types of disputes concern whether the carrier's TPA data is correct, and whether the displaced employee is occupying the highest-rated position that the normal exercise of his/her seniority allows. It is in this area where a requirement to furnish TPA data would produce a benefit for carrier and employee alike.

In the absence of a pre-certification agreement, such as the BLE agreements cited above, a railroad employee faces a daunting challenge in proving that he/she has met the *New York Dock* criteria for being awarded a MDA. Despite the mandate of the conditions that the burden of proof be on the carrier, under recent decisions, the employee must establish a nexus between a

merger-related transaction and the adverse impact. The employee may also be required to demonstrate that he/she is working the highest-rated position allowed by the normal exercise of his/her seniority, or risk having his/her TPA offset by that position. And this all must be accomplished in a setting where the carrier — and not the employee — is in possession of the critical data. The ability of an employee to simply put forward a claim for employee protections would be enhanced by requiring carriers to provide TPAs.

At present, many railroads maintain the position that they are not required to furnish a TPA until such time as an arbitrator has found that an employee has suffered an adverse effect as the result of a merger-related transaction. The absence of a requirement to automatically furnish TPA data serves as an inducement for the railroad to evade its obligation to provide protection, and the potential for costly arbitrations has a chilling effect on the employees in their pursuit of their legal rights. The railroads place the employees in a "Catch-22" situation--they can not obtain benefits without showing adverse effect as a result of the transaction by loss of earnings, but they can not obtain the data necessary to show loss of earnings until they are found to be adversely affected as a result of the transaction. This means that an employee must attempt to show loss of earnings based on pay stubs for the preceding twelve months. And it must be remembered that the loss of earnings is for the test period "time paid-for", so the employee must calculate his/her average hours worked for the preceding twelve months in addition to his/her average earnings. This is unnecessarily complicated and burdensome, when the employee's earnings and hours worked are objective facts readily available to the carrier.

The underlying principle of *New York Dock* is quite simple — displaced employees who have been adversely affected by merger-related transactions are entitled to a MDA to compensate

them for said adverse effect. This principle is betrayed when a railroad can rely upon its data monopoly to deny an otherwise qualifying employee the full measure of his/her MDA.

One's ability to meet the criteria for eligibility for the MDA necessarily depends upon possessing the relevant TPA data. An accurate TPA is indispensable if the employee is to reasonably determine whether there is a bona fide adverse effect, regardless of causation. Furthermore, the employee is relieved of the burden of wearing an informational blindfold while in pursuit of the highest-rated position in attempting to protect his/her MDA.

It makes no economic sense for these issues to be discovered and adjudicated in the context of an arbitral process, when the uncomplicated step of automatic furnishing of TPA data can serve the same end. Accordingly, we urge the Board — in promulgating new regulations governing proposals for major rail consolidations — to adopt a requirement that railroads provide each employee with his/her TPA, upon the employee's request.

Proposed Changes to The *New York Dock* Conditions:

Article I, Section 1(c) of the *New York Dock* Conditions should be amended to read as follows:

> **(1)(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position, the transfer of said position to a location greater than thirty (30) miles from that position's previous location, or the loss of said position~~[thereof]~~ as the result of the exercise of seniority rights by an employee whose position , as a result of the transaction, is either (1) abolished or transferred to a location greater than thirty (30) miles from that position's previous location.~~[as a result of the transaction.]~~**

Article I, Section 1(d) of the *New York Dock* Conditions should be amended to read as follows:

> **(1)(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed <u>until the earlier of (1) such time as said employee is eligible to receive an unreduced Railroad Retirement Annuity or (2) the expiration of period equal to the employee's length of service.</u> ~~[to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or dismissal.]~~For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936.**

The *New York Dock* conditions be clarified to provide at Sections 5 (a) and 6(a) that **test period average monthly earnings and time paid for shall be provided to an employee by the carrier upon the request of the employee.**

VI. SHORTLINE AND REGIONAL RAILROADS

After years of singing the praises of the market-place, complaining about restrictions imposed by government regulation: and advocating the supposed benefits of shortline and regional railroading, the shortlines, regionals and some of their customers have recently advocated government subsidies, and new legislation and regulation to protect the shortlines and regionals; they will presumably press their agenda for new government involvement in their comments in response to the Board's notice of proposed rulemaking. RLD strongly opposes any governmental assistance for the regional and shortline railroads.

A prime example of the hypocrisy of the shortlines and regionals is the request for relief from contracts that they entered with the Class I railroads when they purchased branch lines from the Class I's. At the time when those transactions were in vogue, Rail Labor argued that they often were not genuine transactions, that the lines sold were not really going to be independent of

the Class I's, but instead would simply feed traffic to the Class I's, remaining effectively parts of the systems of the Class I's but with fewer employees working at lower pay rates under inferior terms and conditions of employment. Rail Labor noted that, in many cases, there were powerful financial inducement and penalty provisions in the Class I-new carrier deals, intended to insure that supposedly independent new carriers would necessarily feed traffic only to the Class I's from which they purchased their lines. Rail Labor also noted that the supposed lower operating costs for the shortlines and regionals merely reflected their ability to reduce labor costs by cutting employment and pay and abrogating standard national collective bargaining agreements; and that this would allow the Class I's to retain long haul movements while offering certain shippers lower rates for the former branch line segments of the movements. Rail Labor even showed that some carrier officials (such as those of the Dakota, Minnesota and Eastern and Fox River Valley) had lied about their supposed independence. Rail Labor showed that many of the lines sold were not even financial liabilities, they were merely "marginally profitable"--railroad-ese for lines that made money, but not as much as desired, and not as much as they could make if labor costs were reduced. Rail Labor also pointed-out that the branch lines could not be seen as separate from the trunk lines they fed, but rather were parts of larger systems. However, the shortlines and regionals denied all of Labor's charges, the affected shippers often were cheerleaders for the new carriers and the ICC flat rejected Labor's arguments, even in the face of evidence of false statements.

Now, however, some shortlines and regionals want relief from the contracts that they made. They now acknowledge that they are not truly independent of the Class I's that sold them their lines. They say that they would like to interchange traffic with other Class I's they connect to, but can not because of the provisions in their contracts with the original vendor Class I's that

impose penalties if they interchange with any other Class I. Regionals and shortlines also say that they would like trackage rights or other rights to connect with railroads other than the original vendors, but that contract provisions prohibit that, or the original vendors, or the lines to which they currently connect, refuse to provide such rights. Given the prior claims and misrepresentations of many of the shortlines and regionals, and their original devotion to market principles, their pleas for regulatory relief should be denied. They should be forced to deal with the vagaries of the marketplace just as they forced the railroad workers to deal with the vagaries of the market place; especially since the workers were innocent bystanders, whereas the regionals and shortlines were the deal-makers who now regret the deals they made.

Similarly, the shortlines and regionals have no business complaining about inadequate car supply and the adequacy of their lines. Rail Labor often argued that the shortlines and regionals were undercapitalized, and that they had insufficient equipment (or poor quality equipment) or inadequate physical plant. But these arguments were ignored. Now regulatory relief is sought because regionals and shortlines lack the capital to upgrade their physical plant or can not obtain the locomotives, cars and other equipment that they need. But, the regionals and shortlines and the ICC brushed-off labor's protests in this regard; they assured all involved that they were sufficiently independent, properly capitalized and had adequate facilities and equipment to handle all funding and operational concerns. They should now be held to the representations that they made. If they guessed wrong because the market and shipper service demands did not move in directions they envisioned, or the Class I's made decisions the shortlines and regionals did not anticipate, if the Class I's that they derided as out-of-date dinosaurs acted in a more aggressive and business-like (and less utility-like) manner than they expected, the shortlines and regionals

they should not now be permitted to obtain help from the government. They have no right or equitable claim for assistance after boasting of their flexibility in meeting changing conditions, and after their criticism of the Class I's as unwilling and unable to respond to new circumstances. They certainly have no right or equitable claim for assistance with respect to issues Rail Labor raised as potential problems at the start of the regional/shortline movement.

Some argue that one area where the shortlines and regionals should receive assistance is in maintenance and upgrading of their right -of-way and track. It is asserted that extensive and expensive work will have to be done to merely maintain the current condition of the track, right-of-way and signal system, especially to allow the new heavier rail cars to move over the tracks of the shortlines and regionals.. It is noted that the Class I's are upgrading their trackage but that the shortlines and regionals can not afford to do so. However, the shortlines and regionals seek relief from a problem of their own making. They were advocates of separating branch lines from trunk lines. They claimed that they would have adequate capital to do the necessary work that railroads do. But now they complain that they can not manage the upkeep of the track and signal systems and that once the Class I's decided to use heavier cars and to upgrade their own tracks accordingly, connecting shortlines and regionals were put at a disadvantage because they could not afford the upgrades necessary for the heavier cars. But one way the shortlines and regionals promised higher profitability was to effectively exclude themselves from the significant track, signal system maintenance costs of the Class I's. The regionals and shortlines opted for lower operating costs in the form of lower labor costs and lower maintenance costs and lesser investment in physical plant and equipment. Now they claim they suffer long term problems as a result of their pursuit of short term gains. If the branch lines were still parts of the major carriers,

they would have shared in the upgrades for the full systems, or would have benefitted from more intensive maintenance. Revenues from the large systems would have been available to flow to all of their parts.

The shortlines and regionals asserted that their separation from the large systems was a benefit. But now we see the costs. In essence the complaint of the shortlines and regionals is that after the branches were cut off from the trees, the sap no longer flows to the branches. Having decided to separate from the Class I systems, the shortlines and regionals have no legitimate basis for complaining that separation means inconsistent car and track standards, and different allocations of capital. The Board should not act to relieve the shortlines and regionals from the foreseeable consequences of their own acts.

Rail Labor recognizes that some argue for assistance for the shortlines and regionals because shippers that they serve may be hurt by the inadequacies of the lines and equipment of the shortlines and regionals. But that is not a basis for granting relief to those carriers. Rail Labor notes that shippers were not uninvolved in the line sales. Often the shippers were enthusiastic supporters of the transactions. Many filings for line sales were supported by numerous statements of shippers on the lines involved which criticized the Class I's, expressed a desire to be independent of the Class I's, and touted the supposed benefits of being served by local railroads rather than large systems. With that record, the shippers have no right or equitable claim for relief from problems that are a direct result of transactions that the shippers favored and that were foreseeable adverse consequences of the transactions the shippers supported.

VII. SERVICE AND COMPETITION ISSUES

At this point, RLD will not comment on the service and competition issues identified by the Board as subjects it might address through the rulemaking process, such as requiring so-called "open gateways" for all "major routings", requiring switching at "an agreed upon fee", so-called "bottleneck" issues, and the "one-lump theory". RLD will review the comments filed by other parties and may address their comments on these subjects in RLD's reply comments.

VIII. CROSS-BORDER ISSUES

The Board has sought comment on how its merger rules might address the extensive "array of concerns over potential harms to the nation's interests if a Canadian railroad proposed to merge with a large U.S. railroad." For American rail labor, the prospect of trans-national rail carriers raises two issues of direct concern: (1) loss of employment resulting from transfers of work across borders, and (2) the safety ramifications for rail operations inside the United States.

A. Cross-border Transfers of Work

Section 1180.6 in the current Merger Rules sets forth the supporting information that must accompany a merger application. Section 1180.6(a)(1)(iv)(2)(v) already requires the applicant to address "the effect of the proposed transaction upon applicant carriers' employees (by class or craft) [and] the geographic points where the impact will occur...." The Board should expand this provision by adding the italicized language below:

> (v) the effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur ***(including the transfer of work, if any, from one country to another)***, ...

By adding this specific category of information, the Board will ensure that potential cross-border transfers of work are put on the table up-front. The Board certainly has the authority to consider

whether wholesale work transfers out of the United States are appropriate as part of a transaction. In Section 1180.1(c) the Board explains:

> In determining whether a transaction is in the public interest, the Board performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public. The Board will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public.

If significant amounts of work would leave the United States as a result of a proposed transaction, the Board might consider the harm to this country's (or a region of this country's) economic well-being to outweigh the potential benefits to the applicants. Requiring applicants to reveal their cross-border work-transfer intentions allows the Board to address the issue before approval is granted.[8]

B. Safety Implications of Cross-border Operations

The acquisition of an American railroad by a Canadian railroad raises numerous operational safety concerns. For example, how is the federal government to assure safety in train dispatching operations that control rail traffic in the United States when such operations are situated in Canada? How is the compliance with U.S. regulations to be assured on Canadian locomotives and cars that cross the border and run on tracks in this country? Will territories or districts that traverse borders be created such that workers in both countries will be subjected to potentially conflicting laws and regulations?

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[8] As the Board noted in the ANPR, when the applicants in the CN/IC acquisition revealed their intentions to transfer clerical work to Canada, the Board only approved the transaction after considering the effect on the affected U.S. employees' protective benefits and assuring that they would not lose protection by declining not to move out of the country.

Section 1180.6 describes the information merger applicants must file. Right now, it does not specifically delineate any safety-related information that addresses cross-border concerns. It should. Therefore, we suggest that the Board revise Section 1180.6(a)(1)(iv)(2) to add:

> **(vii) The effect of the proposed transaction upon the application of U.S. safety laws and regulations to the applicants' operations.**

Whether or not the Board goes forward with proposed rules regarding SIPs, this addition to the general supporting information filing requirements will confirm the applicants' obligation to address this important issue of public policy.

By adding this provision, the Board is not now addressing the ramifications of the information it will receive. That can be left for another day. Rather, the Board would be acknowledging that the application of U.S. safety laws and regulations is an important public policy matter that the Board must consider. Indeed, one can easily say that safety is the highest justification for regulatory oversight of rail operations. Foreign carrier actions occurring outside the U.S. can have substantial consequences within this country. If a particular transaction has the potential for affecting safety in domestic rail operations, adding this provision will make clear that the Board expects the applicants to address that potential in their filing; that all parties, including the FRA as part of the DOT[9], will have an opportunity to comment on the issue; and that the Board will consider whether the potential effect is so detrimental as to warrant denial of the

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[9] The Board's Rules already require applicants to serve copies of their initial notices and applications upon the Secretary of Transportation (§1180.4(c)(5)(ii)) and for the Secretary to file written comments (§1180.4(d)(iv)(2)). In addition, the Rules specifically recognize the Secretary's right "to propose modifications to any transaction and...standing to appear before the Board in support of any such proposed modification." (§1180.4(e)(4)).

application or whether to condition approval upon terms consistent with the Board's obligation to protect the public interest.

A foreign ***air*** carrier's authority to provide transportation into and out of the United States is specifically conditioned upon compliance with applicable U.S. regulations.[10] 49 USC §§ 40102(a)(22), 41302, 41305(a); 14 CFR § 211.10(a). The Secretary of Transportation "may impose terms for providing [such] foreign air transportation under the permit that the Secretary finds may be required in the public interest." 49 USC § 41305(b); 14 CFR Parts 201, 211, 213. A foreign ***motor*** carrier's ability to operate in this country is similarly regulated. 49 U.S.C. § 13902(a), (c), (f).

Section 10501 of Title 49 describes this Board's exclusive jurisdiction to extend to rail transportation "between a place in ... the United States and a place in a foreign country." This

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[10] Among other things, the Federal Aviation Administration regulates compliance with air traffic control regulations and prescribes minimum training and retraining requirements, language skills, and education levels for air carrier personnel. pilots, and the ability to speak and comprehend English. 49 USC § 44935;14 CFR Part 129. For example. 14 CFR § 129.19 sets forth the FAA's Rules regarding "Air traffic rules and procedures":

> (a) Each pilot must be familiar with the applicable rules, the navigational and communications facilities, and the air traffic control and other procedures, of the areas to be traversed by him within the United States.
>
> (b) Each foreign air carrier shall establish procedures to assure that each of its pilots has the knowledge required by paragraph (a) of this section and shall check the ability of each of its pilots to operate safely according to applicable rules and procedures.
>
> (c) Each foreign air carrier shall conform to the practices, procedures and other requirements prescribed by the Administrator for U.S. air carriers for the areas top be operated in.

See also, e.g., 14 CFR §129.21 (control of foreign air carrier traffic), § 129.13-14 (registration of aircraft, airworthiness certification, minimum equipment requirements, aircraft maintenance)

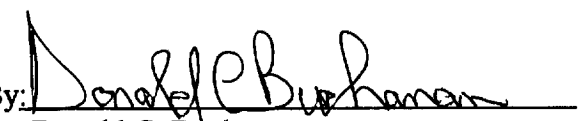
Board certainly has the authority to condition a foreign *rail* carrier's ability to acquire a domestic carrier and operate in this country on compliance with applicable U.S. regulations as well. The foreign carrier, after all, has voluntarily decided to engage in U.S. rail operations by virtue of submitting the merger to the Board for approval. The revision we propose will confirm that consideration will be given to imposing reasonable requirements such as compliance with U.S. laws and regulations for all carrier operations that directly affect domestic rail safety, regardless of where those operations are located, as part of the Board's overall investigation into the effects of foreign carrier activity in this country as part of the merger approval process.

CONCLUSION

For all of the reasons stated herein, the RLD urges the Board to adopt the changes the RLD has proposed with regard to the Board's procedures for major rail consolidations.

Respectfully submitted,

Rail Labor Division
Transportation Trades Department, AFL-CIO

By: 
Donald C. Buchanan
Chair, Rail Labor Division, TTD

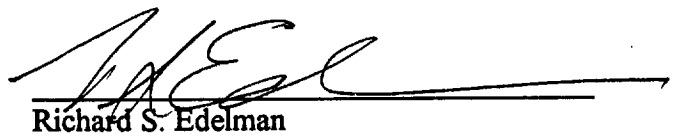
Richard S. Edelman
Donald F. Griffin
Mitchell M. Kraus
Harold A. Ross
Michael S. Wolly

Dated: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of the Rail Labor Division of the Transportation Trades Department Of The AFL-CIO were this day served by First Class Mail, upon all parties of record so designated on the official service lists compiled and published by the Board.

Date: May 16, 2000



Richard S. Edelman

ATTACHMENT A

Resolution No. 9

PRESERVING COLLECTIVE BARGAINING AGREEMENTS

Federal labor policy with respect to collective bargaining, as established by the Railway Labor Act (RLA), is that private agreements are reached and amended by the parties without governmental compulsion. That policy provides a process whereby labor and management can voluntarily resolve differences and enter into contracts, and rejects the notion that the government should micro-manage the substantive terms of the collective bargaining agreements.

In defiance of this policy, the Surface Transportation Board (STB), which has no experience or authority in collective bargaining, has routinely broken or modified privately negotiated employee contracts in the approval of mergers or other transactions. TTD's Executive Committee is on record opposing this practice (See Resolution No. 3-98(w); No. 5-97(o); No. 25-95(s)) and transportation labor has voiced our concern on this matter to the STB, Congress and the Administration on countless occasions.

The STB's continued practice of breaking collective bargaining agreements tramples on private contract rights, destroys the fundamental nature of the collective bargaining process, and is contrary to federal labor policy.

THEREFORE, BE IT RESOLVED:

- That TTD will support STB reauthorization only if the legislation ensures that the STB can no longer break, modify, or alter any collective bargaining agreements or to provide such authority to any other party;

- That TTD will continue to urge the STB to reverse its ill-advised policy of breaking collective bargaining agreements, and will oppose for nomination and confirmation as a member of the STB any individual who has supported or supports this policy; and

- That TTD will advance the views expressed in this resolution to the Administration and to Congress.

Resolution No. 9-99
(Adopted February 16, 1999)

For More Information Call: 202/628-9262

STB REAUTHORIZATION: REFORMS TO PROTECT WORKERS AND THE PUBLIC INTEREST

With Surface Transportation Board (STB) reauthorization legislation possible this year, Congress has the opportunity to reign in the power that mega-rail carriers exercise over workers, shippers and communities. Workers' rights and job security must be enhanced, safety must take on added importance, and Congress must end the outrageous practice of discarding private union contracts at the mere request of merging railroads. Unfortunately, the STB has typically adopted and implemented policies that ignore these concerns and the effect they have on railroad employees and the overall public interest.

Since the passage of the Staggers Act in 1980, the nation has witnessed an unprecedented consolidation in the rail industry that has left thousands of workers out of jobs and has vested unprecedented market power with a few mammoth rail carriers. While the STB has a statutory obligation to consider "the interests of rail carrier employees" affected by proposed mergers, not a single proposed transaction has been rejected or significantly altered because of employee concerns. Workers are promised generous New York Dock benefits, but in reality the railroads fight making these protective payments every step of the way by using long, drawn out legal proceedings to delay or escape fulfilling their obligations to employees.

Not only has the STB refused to protect employees, but it has used a tortured interpretation of law to cancel out collective bargaining agreements made between employees and railroads who later argue that the agreement interferes with a pending merger or acquisition. The STB has extended its authority to justify almost any change that the carriers request even if it is far removed from what is required to complete a transaction. If the nation's rail carriers want to make changes to private collective bargaining agreements, then they should do what every other company with a collective bargaining relationship must do -- sit down with the employees and negotiate an agreement. Transportation labor calls on the Congress to finally put a stop to the practice of a federal agency trampling on the private contract rights of thousands of taxpayers who work on America's railroads.

We are also concerned about the lack of attention that has been paid to ensuring that rail transactions are completed in a manner that will not jeopardize the safety of workers and the public at large. We need only look at the problems that Union Pacific is experiencing as it attempts to complete its merger with Southern Pacific to understand the terrible impact a merger can have on safety. The STB has recently entered into a rulemaking designed to ensure that the safety concerns of rail transactions can be fully evaluated before approval is granted. While we support imposing new safety requirements on merging railroads, we suspect that there will be attempts to weaken this rule by excluding certain transactions or limiting the amount of information that rail carriers must provide. It must be recognized that the STB has an obligation to ensure that the transactions it approves, regardless of the size or type of applicant involved, will not put workers or the general public at further risk.

Shippers and their employees who are dependant on rail transportation also find themselves

at the mercy of virtual rail monopolies. Transportation labor has long maintained that the reduction of competition in the rail industry causes devastating job cuts, harms the economy and communities, and is contrary to sound transportation policy. The massive consolidation also threatens the motor carrier sector where hundreds of thousands of Teamsters are employed. While operators in competing transportation modes fight over market share, the gains on one side always come at the expense of workers on both sides as carriers play the cut throat game of downsizing and squeezing more out of fewer employees.

As rail mergers and other transactions continue to reduce transportation options and market power is further concentrated, it is increasingly important that the role of the STB be reexamined. While transportation labor continues to evaluate proposals to increase competition or address shipper-carrier issues, we know from first-hand experience that massive and unrestrained consolidation in the railroad industry without regard to the needs of shippers, communities and employees, and to the transportation system itself, has been disastrous. We will continue to be mindful of this fact as Congress considers rail competition proposals.

Some have suggested that the STB, as currently structured, is simply incapable of fulfilling its public interest obligations and should be disbanded with its responsibilities parceled out to other government agencies. While this is not a new proposal, it has surfaced again because many believe the STB may have outlived its purpose or is too close to the industry that it is charged with overseeing. Transportation labor is seriously examining such a proposal. Meanwhile, to help guard against potential conflicts of interest, we propose that STB members be subjected to a "revolving door" policy curtailing their participation in the industry once their service terminates.

It is clear that Congress must take every opportunity to force the STB to perform its statutory responsibility to protect the public interest and ensure that protections embodied in statute are carried out in practice, and that voices other than those of railroad executives are heard. Workers, shippers, communities, and state and local governments deserve nothing less.

THEREFORE, BE IT RESOLVED:

- That TTD will insist that Congress put a stop to the Surface Transportation Board's practice of breaking or making wholesale changes to privately negotiated labor agreements;

- that TTD will work its affected affiliates to evaluate and respond to legislative proposals to reign in the power of large railroads; and

- that TTD will advance the views expressed in this statement to the Clinton Administration and to the House and Senate authorizing committees.

Resolution No. 3-98(w)
(Adopted March 17, 1998)

ATTACHMENT B

Significant Railroad Mergers in U.S. History*

(1941 - 1976)

Year	Consolidation, Financial Control, Lease and Merger
1941	Pennsylvania Railroad acquires financial control of Wabash.
1945	Alton merged into Gulf, Mobile & Ohio.
1947	Pere Marquette merged into Chesapeake & Ohio.
1950	Pennsylvania Railroad and the Wabash jointly acquire financial control of Detroit, Toledo & Ironton.
1957	Nashville, Chattanooga & St. Louis merged into Louisville & Nashville.
1957	Atchison, Topeka & Santa Fe and the Pennsylvania jointly acquire financial control of Toledo, Peoria & Western.
1959	Virginian merged into Norfolk & Western.
1960	Erie and the Delaware, Lackawanna & Western consolidated into Erie Lackawanna.
1960	Minneapolis & St. Louis merged into Chicago & North Western.
1961	Minneapolis, St. Paul & Sault St. Marie. the Wisconsin Central, and the Duluth, South Shore & Atlantic consolidated into Soo Line.
1962	Pennsylvania Railroad acquires financial control of Lehigh Valley.
1962	Southern Railway acquires financial control of Central of Georgia.
1962	Chesapeake & Ohio acquires financial control of Baltimore & Ohio.
1964	Nickel Plate merged into Norfolk & Western.
1964	Wabash leased by Norfolk & Western.
1967	Atlantic Coast Line and the Seaboard Air Line consolidated into Seaboard Coast Line.
1967	Chesapeake & Ohio and the Baltimore & Ohio jointly acquire financial control of Western Maryland.
1967	Missouri Pacific acquires financial control of Chicago & Eastern Illinois.
1967	Chicago Great Western merged into Chicago & North Western.
1967	Great Northern, the Northern Pacific and the Chicago, Burlington & Quincy consolidated into Burlington Northern.

Year	Consolidation, Financial Control, Lease and Merger
1968	Norfolk & Western acquires financial control of Delaware & Hudson and the Erie Lackawanna.
1968	Pennsylvania Railroad and the New York Central consolidated into Penn Central.
1969	New York, New Haven & Hartford merged into Penn Central.
1970	Monon (formerly Chicago, Indianapolis & Louisville) merged into Louisville & Nashville.
1971	Illinois Central and the Gulf, Mobile & Ohio consolidated into Illinois Central Gulf.
1976	Chicago & Eastern Illinois and the Texas & Pacific merged into Missouri Pacific.

ATTACHMENT C

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

DECLARATION OF JAMES GIBBONS

---

1. I am a former employee of Conrail (initial seniority date 8/2/65), having worked in the clerical craft and class. Prior to the abolishment of my position in February of 2000, I worked out of Conrail's Customer Service Center in Pittsburgh, Pennsylvania.

2. Prior to the abolishment of my position in Pittsburgh, I resided with my wife in East Palestine, Ohio. My wife works as a schoolteacher in the area for several years.

3. When Norfolk Southern and CSX transferred customer service operations on the Conrail's operations in Southern New Jersey (now part of the "Shared Asset Area") from Pittsburgh to Mount Laurel, New Jersey, my position was abolished and I lacked sufficient seniority to hold a position in Pittsburgh. Rather than resign and forego thirty years of rail seniority, or take unprotected furloughed status, I elected to follow my work to Mount Laurel, over 300 miles away.

4. As a schoolteacher in East Palestine, my wife

participates in a pension plan. As of the time my work was transferred, my wife still needed to work three (3) years in order to collect the pension in which she was vested. Rather than forego three years of work (and the increased pension benefits that she would earn from those years of pension credit), my wife chose to remain in East Palestine to finish out her three years. As a result, since February, I have been working in Mt. Laurel, and commuting more than 350 miles each way every weekend in order to spend time with my wife.

I declare under penalty of perjury that the foregoing is true and correct. Executed this __ day of May, 2000.

JAMES GIBBONS

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of May, 2000.

JAMES GIBBONS

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

DECLARATION OF DAVE STEPHENS

---

1. I am a former employee of Conrail (initial seniority date 12/27/90), having worked in the clerical craft and class. Prior to the abolishment of my position in February of 2000, I worked out of Conrail's Customer Service Center in Pittsburgh, Pennsylvania.

2. Prior to the abolishment of my position in Pittsburgh, I resided with my wife and family in the Pittsburgh area.

3. When CSX and Norfolk Southern transferred customer service operations for the Shared Asset Areas from Pittsburgh to Mount Laurel, New Jersey (some 300 miles away), my position was abolished and I lacked sufficient seniority to hold a position in Pittsburgh. Accordingly, I was given the option of relocating to Mt. Laurel, going on unprotected furloughed status, or resigning from the railroad.

4. My family refused to relocate to Mt. Laurel. Rather than run the risk of losing my wife and family, I opted instead to forfeit my nine years of rail seniority and resign from the

railroad on February 14, 2000, three days before my scheduled transfer date.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of May, 2000.

DAVE STEPHENS

penalty of perjury that the foregoing is P.1
true and correct. Executed this 12 day of May, 2000.

David R. Stephens
DAVE STEPHENS

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

DECLARATION OF PAT BRANNAN

---

1. I am an employee of the Norfolk Southern Railroad, with approximately twenty-six (26) years of rail seniority and was employed by Conrail prior to its 1998 acquisition by NS and CSX. I work in the clerical craft and class.

2. I am married to another rail clerk and, prior to 1999, we both resided in the Pittsburgh area.

3. Before December of 1999, I worked in Conrail's National Customer Service Center in Pittsburgh. When NS eliminated my position in Pittsburgh, I elected to bid on a position in Waynesburg, Pennsylvania, in order to preserve my employment within a reasonable distance of my wife. Following NS' transfer of work from the Pittsburgh area generally, I was bumped from my position in Waynesburg due to abolishments which occurred in Conway, Pennsylvania in January of 2000, and had to displace onto a position at Toledo, Ohio, the closest available position in my seniority district.

4. Clerical forces were subsequently relocated from Toledo

to the Customer Service Center in Atlanta and, because I lacked sufficient seniority to hold one of the remaining positions in Toledo, was forced to either resign and forfeit my quarter century of seniority, go onto unprotected furloughed status, or relocate to Atlanta. I chose to protect my seniority and my protected status by accepting a position in Atlanta. My wife and I have remained geographically separated ever since - she still works in Pittsburgh, while I work in Atlanta, which has seriously damaged my relationship with my wife, which will likely result in divorce.

I declare under penalty of perjury that the foregoing is true and correct. Executed this __ day of May, 2000.

PAT BRANNAN

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

DECLARATION OF RON KASPER

---

1. I am a former employee of Conrail (initial seniority date 12/20/76), having worked in the clerical craft and class. Prior to the abolishment of my position in 1999, I worked out of Conrail's Customer Service Center in Pittsburgh, Pennsylvania.

2. Prior to the abolishment of my position in Pittsburgh, I resided with my wife and two high-school age daughters in the Pittsburgh area. Further, my wife and I have provided (and continue to provide) support and assistance to my mother, who is 81 years of age and resides in the Pittsburgh area, and who relies upon my wife and I to provide for her transportation, shopping, and other needs.

3. When Norfolk Southern transferred customer service operations on the former Conrail properties from Pittsburgh to NS' facility in Atlanta, my position was abolished and I lacked sufficient seniority to hold a position in Pittsburgh. Therefore, I agreed to take a position in Atlanta rather than go on unprotected furlough status.

4. Both my wife and my daughters objected to relocating to Atlanta, and my mother became physically ill as a result of anxiety brought on by the prospect of my family leaving the Pittsburgh area.

5. Because of the incredible stresses being placed upon my family by the prospect of relocating from Pittsburgh to Atlanta, on the eve of my scheduled transfer date, I chose to resign and forfeit my twenty-three (23) years of railroad seniority, rather than risk losing my family.

I declare under penalty of perjury that the foregoing is true and correct. Executed this __ day of May, 2000.

RON KASPER

Pg 1 of 2

Twelve years ago when the U.P. bought the Katy Railroad my husband and I had a total of 34 years service with the railroad. We decided to make the move thinking we would bid on a job so we could both be together. When I first moved to Omaha I called headquarters and talked to numerous people about Joe transfering to Council Bluffs. Well, he could have transfered but lose all his seniority. He moved as close to Omaha as he could which resulted in him living in Effingville, Kansas which is a seven hour drive. When the U.P. starting hubbing the areas, again we thought maybe he would hub with Ft Worth and I could bid on job there. Another let down, Effingville Kansas did not hub with anyone.

As far as hardships, look at Joe's work record for past 30 years. He is very dedicated to his job. Very few lay offs over his railroad career.

When we moved here Kids were 11 & 12 years old. He missed their entire teenage years. Teaching them to drive a car, all the activities they were in,

Pg 242

School functions, Misty's & Byers first date, high school prom, etc- When he did lay off it was for graduation from high school and to be home for Christmas. Most all other holidays we celebrate alone Outside of a 3 week vacation every year and some birthdays and Christmas we are alone.

The Kids and I have pretty well accepted the fact now. They are now 21 and 22 years of age. Guess Joe can lay off next year when Misty graduates from college and gets married.

The RR (Union Pacific) may have made my house payment and left me fed, but if I had it to do all over again I would have quit.

Only because of our deep love for each other have Joe & I made it all these years. Many others didn't. At least I had the kids (two boys)!

Billie Mace

MAY 15, 2000

MR. J. F. LYDON, GC
SYSTEM BOARD 106
OMAHA, NE

REF: HARDSHIP OF LIVING AWAY FROM HOME

DEAR JOHN:

I HAVE SUFFERED EXTREME HARDSHIP SINCE THE ABOLISHMENT OF ALL CLERKS AT TOPEKA, KS ON THE UPRR SINCE NOV. 1987. I WAS ASSIGNED TO UPS ON AUG 1, 1988 IN OMAHA, NE. IT'S NO PLEASURE SEEING OTHER CRAFTS PERFORM CLERICAL DUTIES THAT I ONCE WAS ASSIGNED AT HOME IN TOPEKA. MY CHILDREN (3) WERE IN HIGH SCHOOL AND MY WIFE'S FAMILY WERE IN TOPEKA AND I COULDN'T OR WOULDN'T MOVE TO OMAHA. THIS CHANGE HAS COST ME THOUSANDS OF DOLLARS IN OUT OF POCKET EXPENSES FOR EXTRA LIVING AND TRAVEL EXPENSES NOT TO MENTION THE STRESS ON MY PERSONAL RELATIONSHIP WITH MY FAMILY, ACCOUNT BEING AWAY FROM HOME FOR MYSELF AND THEM ALONG WITH MY FRIENDS. I HAVE TOTALED ONE TRUCK ON ICE GOING HOME ONE FRIDAY AND HAVE GONE THROUGH PROSTATE CANCER. I WOULD LIKE YOU HELP IN SOME SOLUTION TO THIS HARDSHIP.

SINCERELY
WILLIAM E. BARDSLEY
NPS SPECIALIST
OMAHA, NE

Mr John Lydon, Gen. Chrmn.
TCU

Dear John:

In 1997, we (in Denver) on Roster 1 were forced to make a decision on whether we wanted to continue being employed with the merged railroads or find other employment.

I chose to become a timekeeper and move to Omaha in March, 1992 Since my wife, Barbara, needed to continue with her job in Denver, she did not come with me. I have been in Omaha three years and one month. It has been very difficult and expensive maintaining two residences. It has been very lonely in Omaha, particularly on the weekends. I go home once, and rarely, twice a month. Since I am very close to being sixty years of age and will have total seniority (30 years) with four railroads (in July), I look forward to the hopefully upcoming 60/30 retirement package.

Yours Very Truly,
[signature]
5-15-2000

Fred Willrich

** TOTAL PAGE.04 **

05/15/2000 10:30 AM

To: John Lydon
cc:

Subject: HARDSHIPS

I was transfered in July 1997 to Omaha. Since that time have had several major family emergencies.

1. My brother Gary Durham passed away 12/97. Off 2 weeks to handle funeral arrangements and other personal matters concerning his death.

2. Mother, Mrs. Pauline Durham suffered a stroke in 6/98. During this time my Mother-in-law, Mrs. Dorthy Morrison passed away. My Mother had to start treatments for cancer. I was off work approximately 8 weeks without pay. In Decemer of 1998 was forced to move my Mother here for health reasons. She was in the hospital for about 6 weeks at Clarkson before passing away.

3. My husband had a triple by-pass 3/00. This was his second major heart attack. During this leave I was forced to sell my house in Houston. He will be moving here in June.

This has been a tremendous stress trying to handle family emergencies living in Omaha. I have suffered some health problems in the last year. There are no other family members to help with these problems. Have lost 14-16 weeks pay being off on family emergency leave.

Paula D. Morrison
Senority 10/19/81
SS# 452-68-9474